

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

ROBIN JEAN DAVIS,

Plaintiff,

v.

Case No. 2:18-CV-01316

Hon. Thomas E. Johnston

JIM JUSTICE, Governor; ROGER HANSHAW,
Speaker of the West Virginia House of Delegates;
JOHN OVERINGTON, Speaker Pro Tempore of the
West Virginia House of Delegates; CHANDA ADKINS,
GEORGE AMBLER, WILLIAM ANDERSON, MARTIN
ATKINSON III, SAIRA BLAIR, BRENT BOGGS,
JIM BUTLER, MOORE CAPITO, ROY COOPER,
VERNON CRISS, MARK DEAN, FRANK DEEM,
JOE ELLINGTON, PAUL ESPINOSA, ALLEN V.
EVANS, ED EVANS, TOM FAST, MICHAEL FOLK,
GEOFF FOSTER, CINDY FRICH, MARTY GEARHEART,
DIANNA GRAVES, BILL HAMILTON, DANNY HAMRICK,
JASON HARSHBARGER, KENNETH HICKS, JOSHUA
HIGGINBOTHAM, JORDAN HILL, RAY HOLLEN,
ERIC L. HOUSEHOLDER, GARY G. HOWELL, D.
ROLLAND JENNINGS, JOHN R. KELLY, KAYLA
KESSINGER, CHARLOTTE LANE, DANIEL LINVILLE,
SHARON LEWIS MALCOLM, JUSTIN MARCUM,
PATRICK MARTIN, ZACK MAYNARD, PAT MCGEEHAN,
CAROL MILLER, RILEY MOORE, ERIC NELSON,
JEFFREY PACK, TONY PAYNTER, RODNEY A. PYLES,
BEN QUEEN, RALPH RODIGHIERO, MATTHEW
ROHRBACH, WILLIAM R. ROMINE, RUTH ROWAN,
JOHN SHOTT, KELLI SOBONYA, JOE STATLER,
AMY SUMMERS, TERRI SYPOLT, JILL UPSON,
DANNY WAGNER, GUY WARD, STEVE WESTFALL,
BRAD WHITE, S. MARSHALL WILSON, MARK ZATEZALO,
members of the West Virginia House of Delegates;
STEVE HARRISON, Clerk of the West Virginia House of
Delegates; RYAN FERNS, Majority Leader of the
West Virginia Senate; MIKE AZINGER, ROBERT D. BEACH,
CRAIG BLAIR, GREG BOSO, CHARLES H. CLEMENTS,

SUE CLINE, ROBERT L. KARNES, KENNY MANN,
MIKE MARONEY, MARK R. MAYNARD, RICHARD
OJEDA, PATRICIA RUCKER, RANDY SMITH,
DAVE SYPOLT, TOM TAKUBO, JOHN R. UNGER II,
RYAN WELD, MIKE WOELFEL, members of the West
Virginia Senate; LEE CASSIS, Clerk of the West
Virginia Senate,

Defendants.

DEFENDANT GOVERNOR JIM JUSTICE'S RESPONSE TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION

Comes now Defendant Governor Jim Justice, by counsel, Paul Anthony Martin, Chief
Deputy Attorney General, Kelli D. Talbott, Senior Deputy Attorney General, Abby G.
Cunningham, Assistant Attorney General, and Caleb A. Ellis, Assistant Attorney General, and
responds to the Plaintiff's Motion for Preliminary Injunction.

I.

ARGUMENT

THE PLAINTIFF DOES NOT SEEK INJUNCTIVE RELIEF AGAINST THE
GOVERNOR AND THE GOVERNOR SHOULD BE DISMISSED FROM THIS
MATTER.

On June 25, 2018, Governor Justice issued a Proclamation calling the West Virginia
Legislature into Extraordinary Session on June 26, 2018 to consider and/or act upon "[m]atters
relating to the removal of one or more Justices of the Supreme Court of Appeals of West
Virginia, including, but not limited to, censure, impeachment, trial, conviction, and
disqualification" Governor Justice exercised his authority to do so pursuant to Article VII,
Section 7 of the West Virginia Constitution.

As generally described in Plaintiff's Complaint, the Legislature, both the House of
Delegates and the Senate, have convened under the call and taken the action that they deemed

appropriate to consider possible action against one or more Justices of the West Virginia Supreme Court. (Compl. ¶¶ 20, 23, 39, 77 and 82) It is not in dispute that the West Virginia Senate is now poised to conduct an impeachment trial involving the Plaintiff starting on October 29, 2018. Therefore, at the time that Plaintiff filed her Complaint, approximately three months had passed since Governor Justice issued the legislative call at issue.

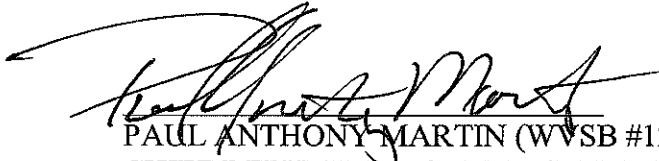
The Plaintiff's Complaint does not request any injunctive relief against Governor Justice. Instead, Plaintiff requests only that a declaration be issued by this Court in which it is determined that the Governor's legislative call was "contrary to law." (Compl. at 39.) In addition, the Plaintiff's Motion for Preliminary Injunction seeks to enjoin the impeachment proceedings now ongoing in the West Virginia Senate *in which Governor Justice has no role*. Clearly, the Plaintiff did not seek injunctive relief to stop the Legislature from convening or acting at all under the Governor's call – if indeed, as she claims, the call was "contrary to law." Therefore, this matter is now postured in such a manner that the Governor's act of calling the Legislature into Extraordinary Session has occurred and the Legislature has conducted proceedings under the call over an approximate three month period. The fact that the Plaintiff did not seek to obtain injunctive relief immediately upon the issuance of the Governor's call substantially undermines, if not defeats, any claim that she may be asserting that she is suffering irreparable harm solely as a result of the issuance of the Governor's Proclamation.

Because the Plaintiff does not seek any preliminary or permanent injunctive relief against the Governor, the Governor trusts that the West Virginia Senate Defendants, whose actions are sought to be enjoined, will adequately respond to Plaintiff's request for injunctive relief. Ultimately, as set forth in Governor Justice's Motion to Dismiss and Memorandum in Support thereof, he should be dismissed from this matter on the basis of Eleventh Amendment Immunity,

Legislative Immunity, immunity provided by West Virginia state law, that the declaratory judgment sought by the Plaintiff is a remedy, not a cause of action, and failure to state plausible claims against Governor Justice.

JIM JUSTICE, GOVERNOR
By counsel

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